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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. (S) No.7255 of 2007

PETITIONER Maniram s/o Punitram Patel, aged about 40 years, R/o village & Post Kamaraud Tahsil & District- Mahasamund(CG)

Versus

RESPONDENTS

1 State of Chhattisgarh, Through Secretary, School Education Department, D.K.S. Bhawan, Raipur (C.G.)

2 District Education Officer, Mahasamund District Mahasamund(CG)

3 Block Education Officer, Bagbahara, Mahasamund(CG)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Appearance:

Shri Anup Majumdar, counsel for the petitioner.

Shri Shri Satish Gupta, Dy. Government Advocate and Shri Sumit Verma, Panel Lawyer for the State/ respondents on advance copy.

ORAL ORDER
(10.12.2007)

SUNIL KUMAR SINHA, J.

Heard on admission.

The petitioner, who is working on the post of Shiksha Karmi Grade-III, has prayed for a direction to the respondents to give regular/permanent appointment to him on the post of Shiksha Karmi Grade-III or Lower Division Teacher, considering his qualification.

The brief facts are that the petitioner was given compassionate appointment on 16.3.2006 on account of death of his father namely-Punitram Patel, who died in harness. The petitioner was given appointment on the post of Shiksha Karmi Grade-III in Government Primary School, Dumarpali, Block Bagbahara, District Mahasamund. The copy of appointment order dated 16.3.2006 has been produced before this Court.

Learned counsel for the petitioner argues that in fact, it was a temporary appointment given to the petitioner and the same was not a regular/permanent appointment, therefore, the services of the petitioner are not secured. He apprehends that the petitioner may be thrown out at any time. He also argues that the petitioner was a better qualified person and he should have given some better post than the post of Shiksha Karmi Grade-III.

I have heard learned counsel for the petitioner at length and have also perused the records of the writ petition.

So far as the principles behind compassionate appointment are concerned, it should be kept confined only to the purpose it seeks to achieve and the idea is not to provide endless compassion. In the matter of ***I.G.(Karmik) & ors. v/s Prahlad Mani Tripathi, 2007 AIR SCW 3305***, the Apex Court held that when the respondent was considered for appointment on compassionate ground in place of his deceased father, who was Constable, he was not found eligible for the post of Constable and he accepted the lower post of peon without any demur. Having done so, he cannot turn round and contend that he was entitled for higher post. Moreso, when no relaxation of qualification was possible.

In the present case, father of the petitioner was working as Lower Division Teacher and after his death; the petitioner was given compassionate appointment on the post of Shiksha Karmi Grade III, which is almost equivalent to the post of Lower Division Teacher.

Learned counsel for the State submits that in fact, the cadre of LDT has been declared to be a dying cadre and now only the appointments are made for Shiksha Karmi Grade III, Grade II and Grade I in place of LDT and UDT.

Firstly, it cannot be said that the petitioner was given appointment on lower post than the post which his father was holding at the time of his death. Principally, the petitioner has been given appointment in similar cadre and almost equivalent post on which, his father was working. More over, when the

appointment letter was issued on 16.3.2006, it was accepted by the petitioner without any demur and the petitioner is working on the post of Shiksha Karmi Grade III from the said date of his appointment. Therefore, having done so, now the petitioner cannot turn round and contend that he was entitled for higher post. The argument advanced by learned counsel for the petitioner cannot be accepted and the same is turned down.

The second point raised by learned counsel for the petitioner is about the nature of appointment, which has been given to the petitioner. His contention is that the nature of appointment of the petitioner is a temporary appointment and he should have been given regular appointment.

After going through the contents of appointment letter dated 16.3.2006 (which has been produced before this Court today and it is being taken on record), it would appear that the appointment of the petitioner was made under the provisions of C.G. Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997. Needless to say that when a particular appointment has been made on the basis of any particular statute, which has been referred in the appointment letter itself, the conditions of service are to be governed by the provisions of the statute itself. It is brought to my notice by the Government Advocate that there is a provision that if a person working as a probationer on the post of Shiksha Karmi Grade-III successfully completes his probation period; he will be automatically regularized/confirmed on the regular post. He refers to the provisions of Rule 7 of the aforesaid Rules 1997.

When the service of the petitioner is being governed by a particular Rule and the service conditions are to be determined under the said Rule and it also provide for regularization/ confirmation after a particular period i.e. after completion of the probation period, then it cannot be said that the nature of appointment was a temporary one. Once the appointment is made under a particular statute, the service conditions and services are to be governed by the provisions of the said statute and the employee will attain a particular status in his service

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according to the statute itself, which, the petitioner will also attain after successful completion of the specified period and after rendering satisfactory services as per the rules.

I do not find any force in the contention advanced by learned counsel for the petitioner. The petition appears to be misconceived. It is disposed of with the aforesaid observations.

No orders as to cost.

Sd/-
Sunil Kumar Sinha
Judge

Sunita